

REMARKS

Claims 21 – 30 have been added. No claims have been cancelled or amended.
Hence, Claims 1 - 30 are pending in the Application.

As a preliminary matter, the claim of priority to U.S. Provisional Application 60/153,464 has not been acknowledged. The claim was properly made in the preliminary amendment filed with the present application. Acknowledgement of this priority is respectfully requested.

Claims 1 – 20 are rejected under 35 USC 103(a) as being unpatentable over Applicant's allegedly disclosed prior art and further in view of "Scalable Timers for Soft State Protocols" herein Sharma.

Claims 1 and 16

Claims 1 and 16, recite

gathering latency information by monitoring latency of a network;
generating one or more time period values based on said latency information;
determining whether to terminate distributed transactions based on said one or more time period values;
determining whether said latency information indicates that changes in the latency of said network satisfy adjustment criteria; and
if said latency information indicates that changes in the latency of said network satisfy adjustment criteria, then adjusting said one or more time period values.

Claims 1 and 16 recite many features that are not suggested much disclosed by the cited art. Further, there are numerous reasons that the cited art fails to render claims 1 and 16 obvious and unpatentable.

I. The cited passages of the application posited by the Office Action as prior art is not prior art.

The rejection of claims 1 and 16 for obviousness was based on prior art allegedly disclosed by Applicant. The Office Action cited the specification on pages 25 – 26 as the location of the disclosed prior art. The Office Action alleges these passages disclose their subject matter as prior art without stating what about these passages make them a disclosure of prior art.

The teaching or suggestion to make the claimed combination ... must be ... found in the prior art and **not based on applicant's disclosure**. The only exception to this bar against using the applicant's disclosure as prior art is when the applicant makes an admission of prior art in the application. "A statement by an applicant during prosecution identifying the work of another as "prior art " is an admission that that work is available as prior art against the claims, regardless of whether the admitted prior art would otherwise qualify as prior art under the statutory categories of 35 U.S.C.102. *Riverwood Int 'l corp. v .R.A.Jones &Co.*, 324 F.3d 1346, 1354,66 USPQ2d 1331,1337 (Fed Cir.2003)" (MPEP 2129 I).

The passage cited by Office Action as disclosing prior art describes a transaction quantum, a time period associated with a transaction acknowledgement and a factor for processing transactions over the internet. The Office Action alleges that these passages disclose, as prior art, the teaching of a "distributed transaction over the Internet using a stateless protocol HTTP that terminates based on value from one or more fixed time periods." These passages do not in any way identify this teaching as "prior art" or as "work of another." Therefore, this passage is not an admission of prior art.

A possible basis for the Office Action alleging that the Applicant disclosed prior art in these passages is the mistaken assumption that the MPEP mandates that only prior

art be disclosed in the background. Therefore, any disclosure in the background is a disclosure of prior art. This assumption is incorrect.

The Background of the Invention ordinarily comprises two parts: ...

(2) Description of the related art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A paragraph(s) describing to the extent practical the state of the prior art or other information disclosed known to the applicant, including references to specific prior art or other information where appropriate. MPEP 608.01(c) (Emphasis added)

As shown above, the MPEP states that the background ordinarily includes related art, not just prior art. Further, while the MPEP further states that the background ordinarily includes prior art, the MPEP does not state the background should or must only describe prior art.

II. The cited art does not disclose or suggest in any way adjusting time values that govern the determination of when to terminate a distributed transaction.

Claims 1 and 16 require "determining whether to terminate distributed transactions based on said one or more time period values", and "adjusting said one or more time period values" "if said latency information indicates that changes in the latency of said network satisfy adjustment criteria." Thus, claims 1 and 16 require adjusting time values that govern, at least in part, the determination of when to terminate a distributed transaction.

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. (MPEP § 2143.03, citing *In Re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974))

Because the portion of Applicant's disclosure posited as prior art by the Office Action cannot be used as prior art, all the limitations of claims 1 and 16 must be taught or suggested by the Shamar. Therefore, a discussion of Shamar is useful.

Shamar

Shamar teaches an approach that uses soft state protocols to manage state used by networking protocols. "Soft state protocols use periodic refresh messages to keep network [soft] state alive while adapting to changing net-work conditions." (page 222, col. 1, 1st paragraph). "State in network nodes refers to information stored by networking protocols about the conditions of the network." (page 222, col. 2)

"The state maintained by nodes in a network can be categorized as hard state and soft state. Hard state is that which is installed in nodes upon receiving a set-up message and is removed only on receiving an explicit tear-down message." (page 223, col. 1, 1st paragraph) "Soft state, on the other hand, uses refresh messages to keep it alive and is discarded if the state is not re-freshed for some time interval. The refreshes are sent periodically after one refresh period. The time that the receiver waits before discarding a state entry is a small multiple of the refresh period." (page 223, col. 1, second full paragraph)

"Based on the roles played by the nodes with respect to the particular state being referenced, the control message exchange among network nodes can be modelled as an exchange of messages between two entities; the sender and the receiver. The sender is the network node that (re)generates control messages to install, keep alive, and remove state from the other node. The receiver is the node that creates, maintains and removes state, based on the control messages that it receives from the sender." (page 222, col. 2, beginning at last paragraph)

"The essential mechanisms required to realize [Shamar's] approach are: (1) dynamic adjustment of the senders' refresh rate so that the bandwidth allocated for control traffic is not exceeded, and (2) estimation of the senders' refresh rate at the receiver in order to determine when the state can be timed-out and deleted." (page 222, col. 1, 2nd paragraph)

Presumably, the Office Action has equated the timing values that underlie and govern the refresh rate of refresh messages (also referred to above as control messages) to the time values claimed. Even if this analogy is accurate, which it is not, Shamar fails to teach or suggest in any way adjusting time values that govern the determination of when to terminate a distributed transaction. Adjusting time values that govern transmission of messages to refresh network state does not disclose or suggest in any way adjusting time values that govern the determination of when to terminate a distributed transaction.

Thus, the cited art fails to teach or suggest adjusting time values that govern the determination of when to terminate a distributed transaction, and therefore fails to teach all the claim limitations of claims 1 and 16.

III. The cited art does not suggest the desirability of combining Shamar with Applicant's disclosed prior art

The fact that references can be combined or modified is not sufficient to establish *prima facie* obviousness. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. (MPEP 2143.01 citing *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed.Cir.1990))

Even if Applicant's allegedly disclosed prior art is prior art, the cited art fails to suggest the desirability of combining Applicant's alleged prior art and Shamar.

Applicant's alleged prior art does not suggest the desirability of the combination. In fact, the Office Action does not allege so.

Instead, the Office Action alleges that "Sharma's conclusion" on page 229 suggests the desirability of this combination. Sharma teaches dynamic adjustment of a sender's refresh rate so that the bandwidth allocated for control traffic is not exceeded, and estimation of the senders' refresh rate at the receiver in order to determine when the state can be timed-out and deleted. These teachings have clear applicability to management of network traffic. However, nothing in Sharma, including Sharma's conclusion, suggest that its teachings have applicability outside the area of managing network traffic, much less have applicability to managing distributed transactions.

Therefore, Sharma fails to disclose the desirability of combining it with Applicant's allegedly disclosed prior art. The combination of the cited art is not sufficient to establish *prima facie* obviousness.

Claims 12 and 19

Claims 12 and 19 require "adjusting [a] transaction execution threshold period" for "termination criteria used to determine whether to terminate [a] distributed transaction." For reasons similar to claims 1 and 16, the cited art fails to disclose or in any way suggest this feature of claims 12 and 19.

Claims 15 and 20

Claims 15 and 20 require adjusting "one or more time period values used to determine whether to terminate [a] distributed transaction. For reasons similar to claims 1 and 16, the cited art fails to disclose or in any way suggest this feature of claims 15 and 20.

Pending Claims

The pending claims not discussed so far are dependant claims that depend on an independent claim that is discussed above. Because each of the dependant claims include the limitations of claims upon which they depend, the dependant claims are patentable for at least those reasons the claims upon which the dependant claims depend are patentable. Removal of the rejections with respect to the dependant claims and allowance of the dependant claims is respectfully requested. In addition, the dependent claims introduce additional limitations that independently render them patentable. Due to the fundamental difference already identified, a separate discussion of those limitations is not included at this time.

For the reasons set forth above, Applicant respectfully submits that all pending claims are patentable over the art of record, including the art cited but not applied. Accordingly, allowance of all claims is hereby respectfully solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER
LLP



Marcel K. Bingham
Reg. No. 42,327

Dated: October 4, 2004

1600 Willow Street
San Jose, CA 95125
Telephone No.: (408) 414-1080 ext.206
Facsimile No.: (408) 414-1076

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